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9 ALLIED PROFESSIONALS INSURANCE COMPANY

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12  
13 ALLIED PROFESSIONALS INSURANCE )  
14 COMPANY, an Arizona corporation, )

Case No. SACV 09-1105 CJC (Cwx)

Consolidated With: SACV 09-1420 CJC  
(Cwx) ✓

15 Plaintiff, )

[PROPOSED] JUDGMENT

16 v. )

17  
18 THOMAS J. NUMMY, L.M.T, an )  
19 individual, )

20 Defendant. )  
21 )  
22 )

23  
24 Upon consideration of plaintiff Allied Professionals Insurance Company's Motion for  
25 Entry of Arbitration Award as Judgment of Court, this Court makes the following findings and  
26 enters judgment as follows:  
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1           1. Defendant Thomas J. Nummy ("Nummy") is a massage therapist who purchased a  
2 malpractice insurance policy ("Policy") from plaintiff Allied Professionals Insurance Company  
3 ("APIC").  
4

5           2. Donna Smith ("Smith") filed a medical malpractice suit against Nummy in Florida  
6 state court. Nummy tendered the Smith lawsuit to APIC, who denied coverage for various  
7 reasons. Nummy thereafter filed a third-party complaint against APIC in the Florida  
8 proceedings. Smith and Nummy settled their underlying dispute, but Nummy's third-party  
9 complaint against APIC remained.  
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12           3. The Policy contained a clear, unambiguous agreement to arbitrate all disputes and  
13 claims arising under or related to any of the provisions of the Policy. The Policy further provided  
14 that the agreement to arbitrate shall be governed by the Federal Arbitration Act ("FAA"), that  
15 the arbitration shall administered by the American Arbitration Association ("AAA") under its  
16 Commercial Arbitration Rules, and the arbitration must occur in Orange County, California.  
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19           4. In January 2011, APIC and Nummy arbitrated their coverage dispute. The  
20 arbitration was held in Orange County, California. APIC appeared at the arbitration and was  
21 represented by attorney Rick A. Cigel. Nummy appeared at the arbitration and was represented  
22 by attorneys Henry J. Graham and Robert S. Cox of the Graham Law Firm of Tallahassee,  
23 Florida.  
24

25           5. On January 26, 2011 arbitrator Lance A. LaBelle issued his Award of Arbitrator  
26 ("Award"). The Award provides in pertinent part,  
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- 1                   “1.   Allied Professionals Insurance Company did not have a duty to defend or  
2                   indemnify Thomas J. Nummy, L.M.T. with respect to Donna L. Smith's  
3                   claims and the ensuing litigation arising out of the incident which took  
4                   place in Bay County, Florida on October 13, 2005, as Thomas J. Nummy  
5                   cannot meet his burden of establishing that a potential for coverage existed  
6                   within the scope of the INSURING AGREEMENTS of the Professional  
7                   Liability Insurance Policy. *Waller v. Truck Insurance Exchange*, 11 Cal. 4th  
8                   1(1995).
- 9                   2.   Allied Professional Insurance Company shall not be entitled to any  
10                  monetary recovery and its claim for \$10,000 as set forth in its Demand For  
11                  Arbitration is denied.
- 12                  3.   Each party shall bear their own fees and costs. Therefore, the administrative  
13                  filing and case service fees of the American Arbitration Association,  
14                  totaling \$950.00 and the fees and expenses of the arbitrator, totaling  
15                  \$8,910.00, shall be borne as incurred.”

16                   This Award is in full settlement of all claims submitted to this Arbitration. All  
17                   claims not expressly granted herein are hereby, denied.”

18                   More than three months have passed since the Award was rendered and transmitted to  
19                   counsel for the parties, and during that period of time, no party has moved to have the award  
20                   vacated, modified or corrected. The Award is final.

21                   Through adoption of the AAA's Commercial Arbitration Rules, the parties have  
22                   consented and agreed that judgment upon the Award may be entered by this Court.

23                   **THEREFORE**, after careful consideration by the court of the papers submitted, evidence  
24                   presented and arguments of counsel, the Court hereby rules as follows:

- 25                   1.   Plaintiff Allied Professionals Insurance Company's Motion for Entry of  
26                   Arbitration Award as Judgment of Court is granted; and  
27                     
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1           **2. JUDGMENT** is entered herewith as follows:

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3           a. Allied Professionals Insurance Company did not have a duty to defend or  
4 indemnify Thomas J. Nummy, L.M.T. with respect to Donna L. Smith's claims and the ensuing  
5 litigation arising out of the incident which took place in Bay County, Florida on October 13,  
6 2005;

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8           b. Allied Professional Insurance Company is not be entitled to any monetary recovery  
9 and its claim for \$10,000 is denied;

10  
11           c. Each party shall bear their own fees and costs. The administrative filing and case  
12 service fees of the American Arbitration Association, totaling \$950.00 and the fees and expenses  
13 of the arbitrator, totaling \$8,910.00, shall be borne by the parties as incurred;

14  
15           d. The Award is in full settlement of all claims submitted to arbitration. All claims  
16 not expressly granted by the Award are denied; and

17  
18           e. The parties shall bear their own fees and costs.

19           **IT IS SO ORDERED.**

20           **12/27/11**  
DATED: January       , 2012

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24           The Honorable Cormac J. Carney  
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